

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION

DERRICK HALL,

Plaintiff,

v.

NURSE HAYES,

Defendant.

CASE NO. 08-CV-13183

DISTRICT JUDGE BERNARD A. FRIEDMAN
MAGISTRATE JUDGE CHARLES E. BINDER

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
RECOMMENDING *SUA SPONTE* DISMISSAL OF DEFENDANT HAYES

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** that Defendant Nurse Hayes be *sua sponte* **DISMISSED** for failure to state a claim and the case closed.

II. REPORT

Plaintiff Derrick Hall is a state prisoner who is currently incarcerated at the Saginaw Regional Correctional Facility in Freeland, Michigan. On July 24, 2008, Plaintiff filed this *pro se* civil rights action pursuant to 42 U.S.C. § 1983, alleging that his Eighth Amendment right to not have his serious medical needs met with deliberate indifference. On September 12, 2008, U.S. District Judge Bernard A. Friedman referred all pretrial matters to the undersigned magistrate judge. (Doc. 3.) Plaintiff's application to proceed without prepayment of fees pursuant to the *in forma pauperis* statute, 28 U.S.C. § 1915(a)(1), was granted by Magistrate Judge R. Steven Whalen on the same day. (Doc. 4.)

After screening the *pro se* complaint pursuant to 28 U.S.C. §§ 1915A(b), 1915e(2)(B), and 42 U.S.C. § 1997e(c)(1), which give the Court the duty to review the complaint to determine, *inter alia*, whether Plaintiff has stated a claim, the undersigned recommended that all defendants be *sua sponte* dismissed except Defendants Vadlamudi, Gladney, and Hayes. This recommendation was adopted on November 13, 2008. On May 15, 2009, the undersigned recommended that the motion for summary judgment filed by Defendants Vadlamudi and Gladney be granted as to Defendant Gladney and denied as to Defendant Vadlamudi. (Doc. 28.) Defendant Hayes had not yet been served, and therefore was not included in this motion or recommendation. On July 14, 2009, Judge Friedman granted the motion for summary judgment as to both Defendants Vadlamudi and Gladney, finding that Plaintiff had failed “to show that the deprivation of medical care was sufficiently serious to rise to the level of an Eighth Amendment violation.” (Order, Doc. 37 at 7.)

Defendant Hayes has now been served process and an answer to the complaint is due on August 3, 2009. The allegation against Defendant Hayes, however, was that Hayes failed to evaluate Plaintiff’s hand injury in a timely manner, and in light of the Court’s finding that Plaintiff’s injury is not sufficiently serious to rise to the level of an Eighth Amendment violation, I suggest that Defendant Hayes be *sua sponte* dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B)(2)¹ and the case closed.

III. REVIEW

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure

¹The statute provides in pertinent part that “the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . fails to state a claim on which relief may be granted.”

to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Howard v. Sec'y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Sec'y of Health & Human Servs.*, 931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ Charles E Binder

CHARLES E. BINDER
United States Magistrate Judge

Dated: July 31, 2009

CERTIFICATION

I hereby certify that this Report and Recommendation was electronically filed this date, electronically served on Christine Campbell; served by first class mail on Derrick Hall, #219552, at Saginaw Correctional Facility, 9625 Pierce Rd., Freeland, MI, 48623-8102; and in the traditional manner on District Judge Friedman.

Date: July 31, 2009

By s/Jean L. Broucek
Case Manager to Magistrate Judge Binder